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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1311

THEODORE McGANN, ADMINISTRATOR, C.T.A.,
OF THE
ESTATE OF JOSEPH H. McGANN, SR., DECEASED,
Petitioner,

v.

DISTRICT OF COLUMBIA,
A MUNICIPAL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Should this Court exercise its jurisdiction to review by a writ of certiorari the construction of a statute of purely local application whereby the estate of a deceased parent is required to pay expenses incurred by a municipal cor-

poration during the decedent's lifetime in connection with the maintenance and care of decedent's mentally incompetent son?

COUNTER-STATEMENT OF THE CASE

Upon recommendation of the District of Columbia Mental Health Commission, decedent's mentally incompetent son was, in 1940, committed by order of the United States District Court for the District of Columbia to Saint Elizabeths Hospital. Having first held a hearing concerned, *inter alia*, with the decedent's ability to pay for his son's support, the Commission recommended and the court ordered that decedent pay $30 a month until further order of the court (J. A. 25, 26). However, maintenance expenses in excess of decedent's monthly payments were admittedly incurred by respondent in connection with decedent's son's care (J. A. 21). When, upon decedent's death, it was discovered that he left an estate valued at more than $90,000, respondent brought, pursuant to § 21-586, D. C. Code, 1967,[1] an action for recovery of these additional expenses (J. A. 18, 19). The United States District Court for the District of Columbia subsequently entered judgment in respondent's behalf, and the United States Court of Appeals for the District of Columbia Circuit affirmed (J. A. 22-24, petitioner's appendix, 1a, 2a). Thereafter, petitioner filed in this Court a petition for a writ of certiorari.

ARGUMENT

Petitioner has failed to present any question of substance warranting the exercise of this Court's jurisdiction to review on writ of certiorari.

The record does not disclose any ground for review conceivably falling within the standards and considerations

[1] This statute is set forth in Appendix, *infra*, p. 1a.

governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The case involves nothing more than the construction of a District of Columbia statute of purely local application which creates support obligations among blood relatives. In ruling in respondent's behalf, the United States Court of Appeals for the District of Columbia Circuit construed § 21-586, D. C. Code, 1967, *supra*, so as to permit recovery from the estate of the parent of the mentally incompetent child of the reasonable hospital expenses incurred on behalf of such child during the parent's lifetime. This ruling not only accords with the court's previous pronouncements, but is consistent with the law elsewhere as well. *Harris* v. *District of Columbia*, 123 U. S. App. D. C. 133, 357 F. 2d 593 (1965); cf. *Beach* v. *Government of District of Columbia*, 116 U. S. App. D. C. 68, 320 F. 2d 790 (1963); *In re Harnish's Estate*, 268 Pa. 128, 110 Atl. 761 (1920); *In re Glass' Estate*, 175 Kan. 246, 262 P. 2d 934 (1953); *State* v. *Stone*, 271 S. W. 2d 741 (Tex. Civ. App., 1954); cf. *Pennhurst State School* v. *Estate of Goodhartz*, 42 N. J. 266, 200 A. 2d 112 (1964).

This Court has made it clear on more than one occasion that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of egregious error, exercise its jurisdiction. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491 (1912); *Del Vecchio* v. *Bowers*, 296 U. S. 280 (1935); *District of Columbia* v. *Pace*, 320 U. S. 698 (1944); *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140 (1915); *Griffith* v. *United States*, 336 U. S. 704 (1949), rehearing denied, 337 U. S. 921 (1949); *Fisher* v. *United States*, 328 U. S. 463 (1946).

There has been no showing of egregious error here. Petitioner obviously cannot convert a simple matter involving the construction of a local statute delineating the

support obligations of blood relatives into a constitutional question involving due process considerations. Here, as in *United Surety Co.* v. *American Fruit Product Co., supra* "* * * The constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here. * * *" (238 U. S. at 142.)

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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